

Senate Engrossed House Bill

FILED

**JANICE K. BREWER
SECRETARY OF STATE**

State of Arizona
House of Representatives
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CHAPTER 222

HOUSE BILL 2694

AN ACT

AMENDING SECTION 15-512, ARIZONA REVISED STATUTES; RELATING TO SCHOOL
PERSONNEL.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 15-512, Arizona Revised Statutes, is amended to
3 read:

4 15-512. Noncertificated personnel; fingerprinting personnel;
5 background investigations; affidavit; civil immunity;
6 violation; classification; definition

7 A. Noncertificated personnel and personnel who are not paid employees
8 of the school district and who are not either the parent or the guardian of a
9 pupil who attends school in the school district but who are required or
10 allowed to provide services directly to pupils without the supervision of a
11 certificated employee and who are initially hired by a school district after
12 January 1, 1990 shall be fingerprinted as a condition of employment except
13 for personnel who are required as a condition of licensing to be
14 fingerprinted if the license is required for employment or for personnel who
15 were previously employed by a school district and who reestablished
16 employment with that district within one year after the date that the
17 employee terminated employment with the district. A school district may
18 release the results of a background check to another school district for
19 employment purposes. The employee's fingerprints and the form prescribed in
20 subsection D of this section shall be submitted to the school district within
21 twenty days after the date an employee begins work. A school district may
22 terminate an employee if the information on the form provided under
23 subsection D of this section is inconsistent with the information received
24 from the fingerprint check. The school district shall develop procedures for
25 fingerprinting employees. For the purposes of this subsection, "supervision"
26 means under the direction of and, except for brief periods of time during a
27 school day or a school activity, within sight of a certificated employee when
28 providing direct services to pupils.

29 ~~B. Fingerprint checks shall be conducted pursuant to section 41-1750,~~
30 ~~subsection G.~~

31 B. FINGERPRINTS SUBMITTED PURSUANT TO THIS SECTION SHALL BE USED TO
32 CONDUCT A STATE AND NATIONAL CRIMINAL RECORDS CHECK PURSUANT TO SECTION
33 41-1750 AND PUBLIC LAW 92-544. THE DEPARTMENT OF PUBLIC SAFETY MAY EXCHANGE
34 THIS FINGERPRINT DATA WITH THE FEDERAL BUREAU OF INVESTIGATION.

35 C. The school district shall assume the costs of fingerprint checks
36 and may charge these costs to its fingerprinted employee, except that the
37 school district may not charge the costs of the fingerprint check to
38 personnel of the school district who are not paid employees. The fees charged
39 for fingerprinting shall be deposited with the county treasurer who shall
40 credit the deposit to the fingerprint fund of the school district. The costs
41 charged to a fingerprinted employee are limited to and the proceeds in the
42 fund may only be applied to the actual costs, including personnel costs,
43 incurred as a result of the fingerprint checks. The fingerprint fund is a
44 continuing fund which is not subject to reversion.

1 D. Personnel required to be fingerprinted as prescribed in subsection
2 A of this section shall certify on forms that are provided by the school and
3 notarized whether they are awaiting trial on or have ever been convicted of
4 or admitted in open court or pursuant to a plea agreement committing any of
5 the following criminal offenses in this state or similar offenses in another
6 jurisdiction:

- 7 1. Sexual abuse of a minor.
- 8 2. Incest.
- 9 3. First or second degree murder.
- 10 4. Kidnapping.
- 11 5. Arson.
- 12 6. Sexual assault.
- 13 7. Sexual exploitation of a minor.
- 14 8. Felony offenses involving contributing to the delinquency of a
15 minor.
- 16 9. Commercial sexual exploitation of a minor.
- 17 10. Felony offenses involving sale, distribution or transportation of,
18 offer to sell, transport, or distribute or conspiracy to sell, transport or
19 distribute marijuana or dangerous or narcotic drugs.
- 20 11. Felony offenses involving the possession or use of marijuana,
21 dangerous drugs or narcotic drugs.
- 22 12. Misdemeanor offenses involving the possession or use of marijuana
23 or dangerous drugs.
- 24 13. Burglary in the first degree.
- 25 14. Burglary in the second or third degree.
- 26 15. Aggravated or armed robbery.
- 27 16. Robbery.
- 28 17. A dangerous crime against children as defined in section 13-604.01.
- 29 18. Child abuse.
- 30 19. Sexual conduct with a minor.
- 31 20. Molestation of a child.
- 32 21. Manslaughter.
- 33 22. Aggravated assault.
- 34 23. Assault.
- 35 24. Exploitation of minors involving drug offenses.

36 E. A school district may refuse to hire or may review or terminate
37 personnel who have been convicted of or admitted committing any of the
38 criminal offenses prescribed in subsection D of this section or of a similar
39 offense in another jurisdiction. A school district which is considering
40 terminating an employee pursuant to ~~the provisions of~~ this subsection shall
41 hold a hearing to determine whether a person already employed shall be
42 terminated. In conducting a review, the governing board shall utilize the
43 guidelines, including the list of offenses that are not subject to review, as
44 prescribed by the state board of education pursuant to section 15-534,

1 subsection C. In considering whether to hire or terminate the employment of
2 a person the governing board shall take into account the following factors:

3 1. The nature of the crime and the potential for crimes against
4 children.

5 2. Offenses committed as a minor for which proceedings were held under
6 the jurisdiction of a juvenile or an adult court.

7 3. Offenses that have been expunged by a court of competent
8 jurisdiction, if the person has been pardoned or if the person's sentence has
9 been commuted.

10 4. The employment record of the person since the commission of the
11 crime if the crime was committed more than ten years before the governing
12 board's consideration of whether to hire or terminate the person.

13 5. The reliability of the evidence of an admission of a crime unless
14 made under oath in a court of competent jurisdiction.

15 F. Before employment with the school district, the district shall make
16 documented, good faith efforts to contact previous employers of a person to
17 obtain information and recommendations which may be relevant to a person's
18 fitness for employment. A governing board shall adopt procedures for
19 conducting background investigations required by this subsection, including
20 one or more standard forms for use by school district officials to document
21 their efforts to obtain information from previous employers. A school
22 district may provide information received as a result of a background
23 investigation required by this section to any other school district, to any
24 other public school and to any public entity that agrees pursuant to a
25 contract or intergovernmental agreement to perform background investigations
26 for school districts or other public schools. School districts and other
27 public schools may enter into intergovernmental agreements pursuant to
28 section 11-952 and cooperative purchasing agreements pursuant to rules
29 adopted in accordance with section 15-213 for the purposes of performing or
30 contracting for the performance of background investigations and for sharing
31 the results of background investigations required by this subsection.
32 Information obtained about an employee or applicant for employment by any
33 school district or other public school in the performance of a background
34 investigation may be retained by that school district or the other public
35 school or by any public entity that agrees pursuant to contract to perform
36 background investigations for school districts or other public schools and
37 may be provided to any school district or other public school that is
38 performing a background investigation required by this subsection.

39 G. A school district may fingerprint any other employee of the
40 district, whether paid or not, or any other applicant for employment with the
41 school district not otherwise required by this section to be fingerprinted on
42 the condition that the school district may not charge the costs of the
43 fingerprint check to the fingerprinted applicant or nonpaid employee.

44 H. A SCHOOL DISTRICT SHALL FINGERPRINT OR REQUIRE THE SUBMISSION OF A
45 FULL SET OF FINGERPRINTS OF ANY CONTRACTOR, SUBCONTRACTOR OR VENDOR OR ANY

1 EMPLOYEE OF A CONTRACTOR, SUBCONTRACTOR OR VENDOR WHO IS CONTRACTED TO
2 PROVIDE SERVICES ON A REGULAR BASIS ON SCHOOL PROPERTY. THE SCHOOL DISTRICT
3 MAY CHARGE THE COSTS OF THE FINGERPRINT CHECK TO THE CONTRACTOR,
4 SUBCONTRACTOR OR VENDOR OR THE EMPLOYEE OF THE CONTRACTOR, SUBCONTRACTOR OR
5 VENDOR. FOR THE PURPOSES OF THIS SUBSECTION, "PROVIDE SERVICES ON A REGULAR
6 BASIS" MEANS SERVICES PROVIDED BY A CONTRACTOR, SUBCONTRACTOR OR VENDOR AT
7 LEAST FIVE TIMES EACH MONTH ON SCHOOL PROPERTY. A SCHOOL DISTRICT GOVERNING
8 BOARD SHALL ADOPT POLICIES THAT MAY EXEMPT PERSONS WHO ARE NOT LIKELY TO HAVE
9 DIRECT, UNSUPERVISED CONTACT WITH PUPILS FROM THE REQUIREMENTS OF THIS
10 SUBSECTION. A SCHOOL DISTRICT, ITS GOVERNING BOARD MEMBERS, ITS SCHOOL
11 COUNCIL MEMBERS AND ITS EMPLOYEES ARE EXEMPT FROM CIVIL LIABILITY FOR THE
12 CONSEQUENCES OF ADOPTION AND IMPLEMENTATION OF POLICIES AND PROCEDURES
13 PURSUANT TO THIS SUBSECTION UNLESS THE SCHOOL DISTRICT, ITS GOVERNING BOARD
14 MEMBERS, ITS SCHOOL COUNCIL MEMBERS OR ITS EMPLOYEES ARE GUILTY OF GROSS
15 NEGLIGENCE OR INTENTIONAL MISCONDUCT.

16 ~~H~~ I. Subsection A of this section does not apply to a person who
17 provides instruction or other education services to a pupil, with the written
18 consent of the parent or guardian of the pupil, under a work release program,
19 advance placement course or other education program that occurs off school
20 property.

21 ~~I~~ J. Public entities that agree pursuant to contract to perform
22 background investigations, public schools, the department of education and
23 previous employers who provide information pursuant to this section are
24 immune from civil liability unless the information provided is false and is
25 acted on by the school district to the harm of the employee and the public
26 entity, the public school, the previous employer or the department of
27 education knows the information is false or acts with reckless disregard of
28 the information's truth or falsity. A school district which relies on
29 information obtained pursuant to this section in making employment decisions
30 is immune from civil liability for use of the information unless the
31 information obtained is false and the school district knows the information
32 is false or acts with reckless disregard of the information's truth or
33 falsity.

34 ~~J~~ K. The superintendent of a school district or chief administrator
35 of a charter school or the person's designee who is responsible for
36 implementing the governing board's policy regarding background investigations
37 required by subsection F of this section and who fails to carry out that
38 responsibility is guilty of unprofessional conduct and shall be subject to
39 disciplinary action by the state board.

40 ~~K~~ L. A school district may hire noncertificated personnel before
41 receiving the results of the fingerprint check but may terminate employment
42 if the information on the form provided in subsection D of this section is
43 inconsistent with the information received from the fingerprint check. In
44 addition to any other conditions or requirements deemed necessary by the
45 superintendent of public instruction to protect the health and safety of

1 pupils, noncertificated personnel who are required or allowed unsupervised
2 contact with pupils may be hired by school districts before the results of a
3 fingerprint check are received if all of the following conditions are met:

4 1. The school district that is seeking to hire the applicant shall
5 document in the applicant's file the necessity for hiring and placement of
6 the applicant before a fingerprint check could be completed.

7 2. The school district that is seeking to hire the applicant shall do
8 all of the following:

9 (a) Ensure that the department of public safety completes a statewide
10 criminal history information check on the applicant. A statewide criminal
11 history information check shall be completed by the department of public
12 safety every one hundred twenty days until the date that the fingerprint
13 check is completed.

14 (b) Obtain references from the applicant's current employer and two
15 most recent previous employers except for applicants who have been employed
16 for at least five years by the applicant's most recent employer.

17 (c) Provide general supervision of the applicant until the date that
18 the fingerprint check is completed.

19 (d) Report to the superintendent of public instruction on June 30 and
20 December 31 the number of applicants hired ~~prior to~~ BEFORE the completion of
21 a fingerprint check. In addition, the school district shall report the
22 number of applicants for whom fingerprint checks were not received after one
23 hundred twenty days and after one hundred seventy-five days of hire.

24 ~~L.~~ M. Notwithstanding any other law, this section does not apply to
25 pupils who attend school in a school district and who are also employed by a
26 school district.

27 ~~M.~~ N. A person who makes a false statement, representation or
28 certification in any application for employment with the school district is
29 guilty of a class 3 misdemeanor.

30 ~~N.~~ O. For the ~~purpose~~ PURPOSES of this section, "background
31 investigation" means any communication with an employee's or applicant's
32 former employer that concerns the education, training, experience,
33 qualifications and job performance of the employee or applicant and that is
34 used for the purpose of evaluating the employee or applicant for employment.
35 Background investigation does not include the results of any state or federal
36 criminal history records check.

APPROVED BY THE GOVERNOR MAY 20, 2008.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 20, 2008.